

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COTTON INTERNATIONAL, INC.,

Plaintiff,

-against-

WESTIN ST. JOHN HOTEL CO., INC., BAY
VISTA OWNERS ASSOCIATION, INC.,
SUNSET BAY CONDOMINIUM
ASSOCIATION, LLC, and SUNSET BAY
VACATION OWNERS ASSOCIATION,
LLC,

Defendants.

Case No. 1:21-cv-2099

**DEFENDANT WESTIN ST.
JOHN HOTEL CO., INC.'S
ANSWER AND
AFFIRMATIVE DEFENSES**

Defendant Westin St. John Hotel Co., Inc. ("WSJ"), by its attorneys, Foley & Lardner LLP, for its answer and affirmative defenses to Plaintiff Cotton International, Inc.'s ("Cotton") First Amended Complaint ("FAC"), states as follows:

NATURE OF THE CLAIM¹

1. WSJ denies the allegations in Paragraph 1 of the FAC.
2. WSJ denies the allegations in Paragraph 2 of the FAC.
3. WSJ denies the allegations in Paragraph 3 of the FAC.

JURISDICTION AND VENUE

4. The allegations in Paragraph 4 of the FAC contain legal conclusions to which no response is required.

¹ The FAC contains various section headings and an introductory paragraph which are not incorporated into numbered paragraphs. The headings and introductory paragraph are not factual allegations. Therefore, no answer is required. To the extent that a response is required, WSJ denies the section headings and introductory paragraph. Further, to the extent the FAC incorporates defined terms, such terms are denied, unless otherwise expressly admitted.

5. The allegations in Paragraph 5 of the FAC contain legal conclusions to which no response is required.

6. The allegations in Paragraph 6 of the FAC contain legal conclusions to which no response is required.

PARTIES AND OTHER ENTITIES

7. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the FAC, and therefore denies the same.

8. WSJ denies the allegations in Paragraph 8 of the FAC, except admits that WSJ operates hotels and that it filed an answer to a complaint filed by Cotton on March 11, 2021 in Case No. 1:21-cv-02099, pending in the Southern District of New York.

9. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the FAC, and therefore denies the same.

10. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the FAC, and therefore denies the same.

11. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the FAC, and therefore denies the same.

12. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the FAC, and therefore denies the same.

13. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the FAC, and therefore denies the same.

14. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the FAC, and therefore denies the same.

FACTUAL ALLEGATIONS

Following Hurricanes' One-Two Punch in September 2017, Westin Retains Cotton to Restore, Repair, and Renovate the Westin St. John Resort Villas

15. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the FAC, and therefore denies the same.

16. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the FAC, and therefore denies the same.

17. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the FAC, and therefore denies the same.

18. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the FAC, and therefore denies the same.

19. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the FAC, and therefore denies the same, except admits that the resort suffered property damage as a result of Hurricanes Irma and Maria.

20. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the FAC, and therefore denies the same.

21. WSJ denies the allegations in Paragraph 21 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

22. WSJ denies the allegations in Paragraph 22 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

23. WSJ denies the allegations in Paragraph 23 of the FAC, except refers to the alleged contracts and change orders for their complete terms and conditions.

24. WSJ denies the allegations in Paragraph 24 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

Westin Agrees to Pay the Gross Receipts Tax Liability as Part of the “Contract Sum”

25. The allegations in Paragraph 25 of the FAC contain legal conclusions to which no response is required. To the extent a response is required, WSJ denies the allegations in Paragraph 25 of the FAC.

26. The allegations in Paragraph 26 of the FAC contain legal conclusions to which no response is required.

27. The allegations in Paragraph 27 of the FAC contain legal conclusions to which no response is required.

28. WSJ denies the allegations in Paragraph 28 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

29. WSJ denies the allegations in Paragraph 29 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

30. WSJ denies the allegations in Paragraph 30 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

31. WSJ denies the allegations in Paragraph 31 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

32. WSJ denies the allegations in Paragraph 32 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

33. WSJ denies the allegations in Paragraph 33 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

34. WSJ denies the allegations in Paragraph 34 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

35. The allegations in Paragraph 35 of the FAC contains legal conclusions to which

no response is required. To the extent a response is required, WSJ denies the allegations in Paragraph 35 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

Westin Reaffirms its Promise to Pay the GRT Liability

36. WSJ denies the allegations in Paragraph 36 of the FAC.

37. WSJ denies the allegations in Paragraph 37 of the FAC, except refers to the alleged contracts and payment applications for their complete terms and conditions.

38. WSJ denies the allegations in Paragraph 38 of the FAC, except refers to the alleged change orders for their complete terms and conditions.

39. The allegations in Paragraph 39 of the FAC contain legal conclusions to which no response is required. To the extent a response is required, WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the FAC, and therefore denies the same.

40. WSJ denies the allegations in Paragraph 40 of the FAC, except refers to the alleged contracts and change orders for their complete terms and conditions.

41. WSJ denies the allegations in Paragraph 41 of the FAC, except refers to the alleged contracts and change orders for their complete terms and conditions.

42. WSJ denies the allegations in Paragraph 42 of the FAC, except refers to the alleged contracts and change orders for their complete terms and conditions.

43. WSJ denies the allegations in Paragraph 43 of the FAC, except refers to the alleged change orders for their complete terms and conditions.

44. The allegations in Paragraph 44 of the FAC contain legal conclusions to which no response is required. To the extent a response is required, WSJ denies the allegations in

Paragraph 44 of the FAC, and therefore denies the same, except refers to the alleged contracts for their complete terms and conditions.

45. WSJ denies the allegations in Paragraph 45 of the FAC, except refers to the alleged contracts and change orders for their complete terms and conditions.

Westin Reneges on its Contractual Obligation to Reimburse the GRT Liability, Forcing Cotton to Initiate Legal Action

46. The allegations in Paragraph 46 of the FAC contain legal conclusions to which no response is required. To the extent a response is required, WSJ denies the allegations in Paragraph 46 of the FAC.

47. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the FAC, and therefore denies the same.

48. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the FAC, and therefore denies the same.

49. WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the FAC, and therefore denies the same.

50. WSJ denies the allegations in Paragraph 50 of the FAC.

51. WSJ denies the allegations in Paragraph 51 of the FAC, except refers to the alleged contracts, change orders and letters for their complete terms, conditions and contents.

52. The allegations in Paragraph 52 of the FAC contain legal conclusions to which no response is required. To the extent a response is required, WSJ denies the allegations in Paragraph 52 of the FAC, except refers to the alleged letters for their complete contents.

53. WSJ denies the allegations in Paragraph 53 of the FAC, except refers to the alleged contracts, change orders and letters for their complete terms, conditions and contents.

54. WSJ denies the allegations in Paragraph 54 of the FAC.

55. WSJ denies the allegations in Paragraph 55 of the FAC.

56. WSJ denies the allegations in Paragraph 56 of the FAC.

COUNT 1: BREACH OF CONTRACT

57. In response to Paragraph 57 of the, WSJ restates, incorporates, and realleges its answers to Paragraphs 1 through 56 of the FAC as if fully set forth herein.

58. WSJ denies the allegations in Paragraph 58 of the FAC, except refers to the alleged contracts and change orders for their complete terms and conditions.

59. The allegations in Paragraph 59 of the FAC contains legal conclusions to which no response is required. To the extent a response is required, WSJ denies the allegations in Paragraph 59 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

60. The allegations in Paragraph 60 of the FAC contains legal conclusions to which no response is required. To the extent a response is required, WSJ denies the allegations in Paragraph 60 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

61. The allegations in Paragraph 61 of the FAC contain legal conclusions to which no response is required. To the extent a response is required, WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the FAC, and therefore denies the same, except refers to the alleged contracts and change orders for their complete terms and conditions.

62. The allegations in Paragraph 62 of the FAC contain legal conclusions to which no response is required. To the extent a response is required, WSJ denies having knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 62 of the

FAC, and therefore denies the same, except refers to the alleged contracts and change orders for their complete terms and conditions.

63. WSJ denies the allegations in Paragraph 63 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

64. The allegations in Paragraph 64 of the FAC contains legal conclusions to which no response is required. To the extent a response is required, WSJ denies the allegations in Paragraph 64 of the FAC.

65. WSJ denies the allegations in Paragraph 65 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

66. WSJ denies the allegations in Paragraph 66 of the FAC, except refers to the alleged contracts for their complete terms and conditions.

67. WSJ denies the allegations in Paragraph 67 of the FAC, except refers to the alleged contracts and change orders for their complete terms and conditions.

68. WSJ denies the allegations in Paragraph 68 of the FAC.

69. WSJ denies the allegations in Paragraph 69 of the FAC.

70. WSJ denies the allegations in Paragraph 70 of the FAC.

71. WSJ denies that Cotton is entitled to any of the relief sought in Cotton's prayer for relief, or to any relief whatsoever.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The FAC fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The FAC, and Cotton's purported damages sought therein, are barred based upon documentary evidence and/or by principles of waiver, release, ratification, estoppel, unclean hands and/or other related equitable doctrines.

THIRD AFFIRMATIVE DEFENSE

Cotton failed to mitigate its purported damages.

FOURTH AFFIRMATIVE DEFENSE

Cotton is barred in whole or in part from recovering any alleged damages, which damages are specifically denied, because such damages were caused and are the result, either in whole or in part, of its own culpable conduct, including its assumption of risk.

FIFTH AFFIRMATIVE DEFENSE

To the extent the FAC refers to or quotes from external documents or other sources, WSJ's responses may refer to such materials for a full and accurate statement of its contents; however, WSJ's references are not intended to be, and should not be construed as, an admission that the cited materials: (a) are accurately cited or quoted by WSJ or (b) are relevant to this action.

SIXTH AFFIRMATIVE DEFENSE

The FAC is barred by the applicable Statute of Limitations, laches, and/or is otherwise barred.

SEVENTH AFFIRMATIVE DEFENSE

Cotton's claim is barred by the express terms of the applicable contract between the parties.

EIGHTH AFFIRMATIVE DEFENSE

WSJ hereby asserts all additional affirmative defenses that may be revealed in the course of discovery, by further investigation or at trial.

NINTH AFFIRMATIVE DEFENSE

Consistent with the Court's October 13, 2021 ruling on Defendants' Motion to Dismiss the First Amended Complaint (ECF 88), and Cotton's representations in its opposition brief (ECF 76), the FAC is barred to the extent that it seeks to hold WSJ liable for purported damages relating to contracts that WSJ did not enter into.

Dated: October 27, 2021
New York, New York

Respectfully submitted,

FOLEY & LARDNER LLP

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